

Insurance and the Financial CHOICE Act (H.R. 10)

Updated August 11, 2017

The Financial CHOICE Act of 2017 (H.R. 10) was passed by the House on June 8, 2017. Among [many other provisions](#), H.R. 10 would revamp many of the insurance provisions in the 2010 [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) (Dodd-Frank; P.L. 111-203).

Background on Insurance Regulation

The federal role in regulating insurance is relatively limited compared with the role in banking and securities. Insurance companies, unlike banks and securities firms, have been chartered and regulated solely by the states for the past 150 years. The current state-centric system was confirmed by Congress in the 1945 McCarran-Ferguson Act (15 U.S.C. §1011 et seq.) specifically preserving the states' authority to regulate and tax insurance and also granting a federal antitrust exemption to the insurance industry for "the business of insurance." There are no federal insurance regulators akin to those for securities or banks, such as the Securities and Exchange Commission (SEC) or the Office of the Comptroller of the Currency (OCC), respectively.

Each state government has a department or other entity charged with licensing and regulating insurance companies and those individuals and companies selling insurance products. States regulate the solvency of the companies and the content of insurance products as well as the market conduct of companies. Although each state sets its own laws and regulations for insurance, the National Association of Insurance Commissioners (NAIC) acts as a coordinating body that sets national standards through model laws and regulations. NAIC-adopted models, however, must be enacted by the states before having legal effect, which can be a lengthy and uncertain process. The states have also developed a coordinated system for insurer resolution, including guaranty funds designed to protect policyholders in the event of insurer insolvency.

Dodd-Frank Insurance Provisions

The Dodd-Frank Act significantly altered the overall financial regulatory structure in the United States, but it largely left the state-centered insurance regulatory structure intact. The areas where the act did affect insurance regulation include

- potential designation of an insurer for enhanced prudential supervision by the Federal Reserve if an insurer's material distress could pose a threat to U.S. financial stability (popularly known as "systemically important financial institution" or SIFI designation). The new [Financial Stability Oversight Council](#) (FSOC), a council of regulators headed by

the Treasury Secretary and including a presidentially-appointed independent insurance expert, is empowered to make SIFI designations. Currently, two insurers are designated (AIG and Prudential) and a third (MetLife) had its designation overturned by a court decision under appeal;

- potential resolution of an insurer by the Federal Deposit Insurance Corporation (FDIC) under the [Dodd-Frank Orderly Liquidation Authority](#) (OLA). Under Dodd-Frank Section 203, nonbank financial companies may be subject to resolution by the FDIC if resolution under the Bankruptcy Code is deemed to pose a [systemic risk](#), a process separate from the FSOC SIFI designation. Application of this authority to insurers, however, would only occur if the state regulators did not act first under the state resolution system;
- creation of a new [Federal Insurance Office](#) (FIO) within the Department of the Treasury. FIO has a variety of authorities, including monitoring the insurance industry and negotiating (along with the U.S. Trade Representative) international covered agreements on insurance prudential matters;
- [oversight of bank and thrift holding companies](#), including companies with insurance subsidiaries, was consolidated in the Federal Reserve; and
- streamlining of the states' oversight of [surplus lines insurance and reinsurance](#).

Insurance and H.R. 10

H.R. 10 would amend the Dodd-Frank provisions relating to FIO, FSOC, and OLA, it would not amend the sections relating to Federal Reserve oversight of bank and thrift holding companies with insurance subsidiaries, nor the sections relating to surplus lines and reinsurance.

Creation of the Office of Insurance Advocate (Title XI of H.R. 10)

H.R. 10 would repeal the Dodd-Frank Title V provisions creating the Federal Insurance Office and replace it with a new Office of Independent Insurance Advocate. The new office would be similar to the FIO, but with some notable differences:

Independence. Both FIO and the new office are within the Treasury, but the Office of Independent Insurance Advocate would be established as an independent bureau with the authority to submit a separate budget request. The Advocate would be appointed by the President and confirmed by the Senate rather than being a civil service appointee. While being subject to general direction by the Treasury Secretary, the Secretary would not be able to delay or prevent the promulgation or rules by the Advocate, nor intervene in matters or proceedings before the Advocate.

FSOC Membership. The head of FIO is currently an FSOC non-voting member, whereas the separate independent insurance expert is appointed by the President to serve as a voting member. H.R. 10 would essentially merge these roles, making the Advocate a voting member and removing the independent insurance expert position.

Office Authority. To perform its function of monitoring the insurance industry, FIO is authorized to issue subpoenas requiring information from insurers. H.R. 10 tasks the Advocate with “observing” the industry and the Advocate is to rely on publicly available information without subpoena authority.

Covered Agreements and International Negotiations. The Advocate retains the FIO authority to enter into international negotiations (along with the U.S. Trade Representative) regarding covered agreements and to potentially preempt state laws in limited circumstances. H.R. 10 would, however, add the requirement that any potential covered agreements be published and open for comment when finalized.

FSOC Designation of Nonbank Financial Institutions (Section 115 of H.R. 10)

Section 115(a) of H.R. 10 would repeal the nonbank designation authority and the application of enhanced prudential requirements by the Federal Reserve.

Orderly Liquidation Authority (Section 111 of H.R. 10)

Section 111(a) of H.R. 10 would repeal all of Dodd-Frank Title II, which created OLA, and replace it with a new chapter of the Bankruptcy Code for financial firms, but one that would not apply to insurers. Thus, any insurer failure would be resolved by the state resolution system.

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